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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

North Pacific Processors, Inc.
Sitka, Alaska

Respondent.

Docket No. CWA-10-2005-0062

CONSENT AGREEMENT AND
FINAL ORDER

I. AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U. S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("the Act"), 33 U.S.C. §1319(g)(2)(B). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA, Region 10 ("Complainant").

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the Act and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues and North Pacific Processors, Inc. (hereinafter referred to as "Respondent") hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Respondent owns and operates a seafood processing facility, the Sitka Sound Seafoods facility, located in Sitka, Alaska ("the Facility").

2.3. From July 31, 2003 to August 2, 2003, EPA conducted an NPDES inspection of the Facility.

2.4. The State of Alaska was given an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent for the violations observed during the inspection.

2.5. A concise statement of the factual basis for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1 Section 402 of the Act, 33 U.S.C. §1342, provides that EPA may issue NPDES permits for the discharge of any pollutant into waters of the United States upon such specific terms and conditions as EPA may prescribe.

3.2. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of any pollutant by any person except as authorized by an NPDES permit or other specified statutory sections.

3.3. At all times relevant to this action, Respondent owned and operated the Facility.

3.4. Respondent is a corporation and is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).

1 3.5. Respondent is authorized to discharge pollutants from the Facility to the Sitka
2 Harbor Channel, Alaska, under NPDES Permit No. AK-G52-0065 ("the Permit"). The Permit
3 became effective on July 27, 2001.

4 3.6. Respondent discharged processing wastewater from the butchering of seafood from
5 the Facility. Seafood processing wastewater is a "pollutant" which is "discharged" within the
6 meaning of Section 502(6) and (12) of the Act, 33 U.S.C. §1362(6) and (12).

7 3.7. Respondent discharged processing wastewater from the butchering of seafood to
8 Sitka Harbor Channel, which constitutes "navigable waters" and waters of the United States as
9 defined in Section 502(7) of the Act, 33 U.S.C. §1362(7).

10 3.8. Section II.A.1.a. of the Permit states that permittees shall grind solid seafood
11 processing wastes to one-half inch in any dimension or smaller prior to discharge, except as
12 specified.

13 3.9. Section V.C.1.j. of the Permit prohibits the discharge of residues (including scum).
14 Section V.C.1.k. of the Permit states that such discharges of residues are allowed within the
15 mixing zone (defined as a one-hundred feet radius zone around the outfall terminus).

16 3.10. Section V.C.1.1. of the Permit specifies that the zone of deposit (ZOD) is limited to
17 one acre.

18 3.11. Section II.B.1. of the Permit specifies that pollutants other than seafood processing
19 wastewater and wastes are not authorized for discharge.

20 3.12. During the NPDES inspection at the Facility on July 31, 2003, the EPA inspector
21 observed waste pieces greater than one-half inch in the discharge plume as well as on the sea floor
22 waste pile.

23 3.13. During the NPDES inspection on July 31, 2003, the EPA inspector observed that
24 the surface waste scum plume extended several hundred feet outside of the mixing zone.

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1 Mellon Client Services Center
2 EPA Region 10
3 500 Ross Street
P.O. Box 360903
Pittsburgh, Pennsylvania 15251-6903

4 Respondent shall note on the check the title and docket number of this case.

5 4.6. Respondent shall submit a photocopy of the check described above to:

6 Regional Hearing Clerk
7 U.S. Environmental Protection Agency
Region 10
8 1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

9 Office of Water
10 Attn: Chae Park
U.S. Environmental Protection Agency
11 Region 10
12 1200 Sixth Avenue, Mail Stop OCE-133
Seattle, Washington 98101

13 4.7. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due
14 date, the entire unpaid balance of penalty and accrued interest shall become immediately due and
15 owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect
16 the assessed penalty under the Clean Water Act. In any collection action, the validity, amount,
17 and appropriateness of the penalty shall not be subject to review.

18 4.8. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in
19 full by its due date, Respondent shall also be responsible for payment of the following amounts:

- 20 a. Interest. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. §1319(g)(9), any
21 unpaid portion of the assessed penalty shall bear interest at the rate established by
22 the Secretary of the Treasury pursuant to 31 U.S.C. §3717(a)(1) from the effective
23 date of the Final Order contained herein, provided, however, that no interest shall
24 be payable on any portion of the assessed penalty that is paid within thirty (30)
25 days of the effective date of the Final Order contained herein.

1 b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to
2 Section 309(g)(9) of the Act, 33 U.S.C. §1319(g)(9), should Respondent fail to pay
3 on a timely basis the amount of the penalty assessed by the Final Order contained
4 herein, Respondent shall pay (in addition to any assessed penalty and interest)
5 attorneys fees and costs for collection proceedings and a quarterly nonpayment
6 penalty for each quarter during which such failure to pay persists. Such
7 nonpayment penalty shall be in an amount equal to twenty percent (20%) of the
8 aggregate amount of Respondent's penalties and nonpayment penalties which are
9 unpaid as of the beginning of such quarter.

10 4.9. The penalty described in Paragraph 4.3 of this CAFO shall represent civil penalties
11 assessed by EPA and shall not be deductible for purposes of federal taxes.

12 4.10. The undersigned representative of Respondent certifies that he or she is fully
13 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this
14 document.


15 4.11. Except as described in Paragraph 4.8 of this CAFO, each party shall bear its own
16 costs in bringing or defending this action.

17 4.12. Respondent expressly waives any rights to contest the allegations and to appeal the
18 Final Order contained herein.


1 4.13. The provisions of this CAFO shall bind Respondent and its officers, directors,
2 agents, servants, employees, successors, and assigns.

3 STIPULATED AND AGREED this 17 day of JANUARY, 2005.

4
5 NORTH PACIFIC PROCESSORS, INC.

6 
7 _____
8 Signature
9 Print Name: ROBERT D. NICKINOVICH
10 Title: PRESIDENT

11 U.S. ENVIRONMENTAL PROTECTION AGENCY
12 REGION 10

13 
14 _____
15 Cara Steiner-Riley
16 Assistant Regional Counsel
17 EPA, Region 10

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V. FINAL ORDER

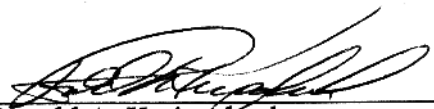
5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. §22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits issued thereunder.

5.3. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. §1319(g)(4)(A), EPA has published public notice of its intent to enter into this CAFO with Respondent and has invited public comment in accordance with 40 C.F.R. §22.45. More than 40 days have elapsed since the issuance of this public notice, and EPA has received no petitions to set aside the Consent Agreement contained herein.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 2ND day of MARCH, 2005.



Ronald A. Kreizenbeck
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: North Pacific Processors, Inc., Sitka, Alaska, DOCKET NO.: CWA-10-2005-0062** was filed with the Regional Hearing Clerk on March 2, 2005.

On March 3, 2005 the undersigned certifies that a true and correct copy of the document was delivered to:

Cara Steiner-Riley, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on March 3, 2005, to:

Jeffrey Backlund, Manager
North Pacific Processors, Inc.
Sitka Sound Seafoods
P.O. Box 31179
Seattle, Washington 98103-1179

DATED this 3rd day of March 2005.



Carol Kennedy
Regional Hearings Clerk
EPA Region 10